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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/832,649	04/11/2001	Richard Holzner	13027.14US01	1629
23552	7590	10/24/2003	EXAMINER	
<b>MERCHANT &amp; GOULD PC</b> P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903				VALENZA, JOSEPH E
ART UNIT		PAPER NUMBER		
3651				

DATE MAILED: 10/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

SW

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/832,649	HOLZNER ET AL.
	Examiner	Art Unit
	Joseph Valenza	3651

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 17 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1 and 3-9 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 3 and 5-9 is/are rejected.

7) Claim(s) 4 is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)      4) Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

6) Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1, 3 and 5-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Huber et al '003.

Note motor 20, planetary gearing 50, 55 and 60, lift 40, roller 30, first brake 90 and second brake 70. Note column 4 lines 25-30 of Huber et al state that when brake 90 brakes roller 30 the drive from motor 20 is diverted not slowed to the lift means 40. While Huber is silent as to the design (electrical, mechanical, etc.) of the first and second brake means, their designs have not been proven to be critical to the operation of the claimed system. Therefor, the design of brakes 90 and 70 are considered to be functionally equivalent to those claimed. With regard to claim 3, the need for a brake gear with the first brake is a matter of choice since the first brake in Huber et al is a functional equivalent design.

2. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

3. While it is argued by applicants that brake 90 is an uncontrolled or constantly operating brake, the examiner does not agree. If brake 90 is an uncontrolled or constantly operating brake, there would be no need for brake 70. Brake 70 applies a slight braking force to lock the elevated roller in its raised state as discussed in column 4 lines 15-18. If brake 90 constantly applies a slight braking force, the roller would be constantly raised. Since the roller raises and lowers, brake 90 is not constantly applied.

Art Unit: 3651

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

5. Any inquiry concerning this communication should be directed to Joseph E. Valenza at telephone number (703) 308-2577. Amendments may be faxed to (703) 872-9306. My normal work week is Monday through Thursday.



JOSEPH E. VALENZA  
PRIMARY EXAMINER